IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.38 OF 2005

Murlidhar P. Mane ...Appellant

Vs.

Anand S. Vishal & Anr. ...Respondents

Mr.A.A.Kumbhakoni i/b Mr.S.D.Patil for the Appellant.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 9,2005.

P.C.:

1. Heard Shri Kumbhakoni for the Appellant. The challenge is to the money decree passed by the Appellate Court against the Appellant/Defendant No.1. The case of the Respondent No.1/Plaintiff is that he agreed to purchase a motor vehicle owned by the Appellant through the Respondent No.2. The case of the Respondent No.1 is that certain amounts were paid by him out of which a sum of Rs.31,450/- was paid by him by a bearer cheque issued in the name of the Appellant. There is no dispute about the fact that the said cheque was encashed. As the vehicle was not transferred to the Respondent No.1, he filed a suit for recovery of compensation.

2. Shri Kumbhakoni submitted that there is no privity of contract between the Appellant and the Respondent No.1 and there is nothing on record to show that the Appellant had agreed to sell his vehicle to the Respondent No.1/Plaintiff. He submitted that there is nothing on record to show that the Appellant was even aware that the sum of Rs.31,450/- is paid

by the Respondent No.1. He submitted that the Appellate Court has dealt with the merits of the case only in one paragraph and though it is established that amount payable by cheque is received by Shri S.B.Tahate still the Appellate Court has proceeded to pass a decree against the Appellant. He stated that the Judgment of the Appellate Court is perverse.

3. It is to be borne in mind that that the fact that the Plaintiff issued a cheque in the sum of Rs.31,450/- in the name of the Appellant is not disputed. It is therefore necessary to refer to the paragraph No.9 of the written statement of the Appellant. The Appellant has stated that jeep purchased by him was handed over by him to the Respondent No.2 for the purpose of painting and minor renovation and the Respondent No.2 had shown willingness to purchase the jeep and accordingly it was agreed between the Appellant and the Respondent No.2 to sell the jeep in the sum of Rs.43,000/-. In the same paragraph the Appellant has accepted that the cheque in the sum of Rs.31,450/- which was a bearer cheque was handed over to him by the Respondent No.2 and the Respondent No.2 arranged to withdraw the amount payable under the cheque. It is also admitted that the entire amount was accepted by the Appellant from the Respondent No.2. What is pleaded is that the Appellant was not aware that the Respondent No.2 had brought the said amount from the Respondent No.1-Plaintiff.

4. Before the Trial Court an Officer of Central Bank of India

was examined who produced the original cheque. The said cheque is issued in favour of the Appellant by the Respondent No.1. On the reverse side of the cheque there were signatures of the Appellant and one Shri S.B.Tahate. The said witness has proved that the cheque was drawn by the Respondent No.1 on his own account and the same has been encashed.

5. Perusal of the paragraph No.9 of the written statement shows that the entire amount payable under the cheque has been received by the Appellant. It is pertinent to note here that the Appellant has not stepped into witness box. In this view of the matter when the Respondent No.1 has admittedly not received the vehicle, the Appellate Court passed a decree for payment of Rs.31,450/- with interest at the rate of 9% against the Appellant. The Appellate Court has accepted the evidence of the Officer of the bank. The Appellate Court has also taken care to compare the signature of the Appellant on the reverse side of the cheque with admitted signature on record by exercising power under Section 73 of Indian Evidence Act. After noting that the Appellant has not stepped into the witness box the Appellate Court proceeded to pass the decree.

6. In my view this was a fit case in view of the admitted position in the written statement where adverse inference should have been drawn against the Appellant for not stepping into the witness box. No substantial question of law arises.

Second Appeal is dismissed with no order as to costs.

JUDGE.